IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3558 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MISS.ANNYVARKEY

Versus

UCO BANK

Appearance:

MR CHETAN P PANDYA for Petitioner

MR DARSHAN M PARIKH for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/08/2004

ORAL JUDGEMENT

1.0 By way of the present petition the petitioner has prayed for a direction to the respondent no.1 to correct the record and consider the petitioner as an optee for the pension under the UCO Bank's Employees (Pension) Regularations, 1993.

2.0 The petitioner joined the service of the respondent Bank as Clerk with effect from 1.10.1980. The respondent Bank implemented the UCO Bank employees (Pension) Regulations, 1993 (hereinafter referred to as the Regulations) for giving irrevocable option to become a member of Bank's pension scheme as per the said regulations. On receipt of the irrevocable option for pension from the employees, the Bank has authorized the trustees of the Contributory Fund to transfer the entire contribution of the Bank along with entire interest accrued thereon to the credit of pension fund to be created for this purpose.

2.1 The petitioner submitted the form of option to become a member of the pension fund as per the Regulations on 23.9.1994 to the respondent no.3. In pursuance of the same the respondent no.3 started deducting the Bank's contribution to the pension fund every month from the salary paid to the petitioner.

2.2 Though the scheme was introduced in the year 1994, after the calculation and completion of other formalities, the scheme was finalised only in the year 1998. On receipt of the statements of Provident Fund from the respondent no.1 Bank, the petitioner came to know that no implementation of the option of pension scheme in respect of the petitioner has been made.

2.3 The petitioner therefore immediately brought this fact to the knowledge of the respondent no.3 who in turn took up the matter with respondent no.1. The respondent no.1 thereafter informed the respondent no.3 by letter dated 1st November 2000 that since the petitioner is not an optee of the Pension Scheme, her application cannot be entertained. It is under the aforesaid circumstances the petitioner has approached this Court by way of the present petition.

3.0 Learned counsel for the petitioner submitted that in fact the petitioner on 23.9.1994 submitted her Form opting to become a member of the Pension Scheme. According to her, even after her representation the respondent no.3 verified the entire record and recommended her case by letter dated 4.12.2000. Learned counsel submitted that when respondent no.3, who is the best authority to verify and recommend her case, has supported her case, there was no reason for the respondent no.1 to reject the representation.

4.1 Affidavit in reply has been filed on behalf of the respondent Bank. In para 4.2 it has been stated as

under:

"Draft Regulations for pension were formulated in the year 1993 for sanction under the provisions of Section 19 of the Banking Companies (Acquisition & Transfer of Undertakings (Act, 1970. The said draft regulations could not have been given any effect nor were they ever given any effect till sanction under Section 19 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 was received. Finally, the Pension Regulations of 1995 were formulated and sanctioned and they are the only final and binding regulations as the UCO Bank (Employees) Pension Regulations, 1995 (hereafter referred to as "pension regulations"). With a bona-fide apprehension that the 1993 draft regulations may be sanctioned by the Central Government as proposed, after the draft regulations were framed and pending the sanction of the Central Government, it was thought fit by the IBA that the Bank and all other similarly situated banks may start the process of collecting the data and processing the same so that as soon as the sanction of the Central Government is received and the regulations are framed by issuance of the Notification, the same can be implemented at the earliest and the persons who were entitled to receive the pension under the regulations can be immediately given the benefit and the said process can be completed by the time the sanction is received and the Notification is issued. Thus, in the bona-fide apprehension that the draft regulations might be sanctioned the bank proceeded to issue circulars and processing the matter calling for options. By their circular the bank had advised its employees to decide to exercise their option whether to continue with Provident Fund or to choose Pension Fund. The petitioner was required to furnish an application in prescribed format. The branch where the petitioner was working had 20 employees (including the petitioner) posted at the relevant point of time. The branch sent, along with the letter dated 30.11.1994, options of 11 employees to the concerned office. This letter did not include the name of the petitioner as a person who had opted for pension. A copy of the said letter is annexed hereto and marked ANNEXURE-A. Thus, as per the records of the bank at the Head Office, the petitioner had not exercised the

> option of pension and had continued to be the Provident Fund Scheme. Later on, in the year 1995, when the pension regulations came into effect, after the sanction by the Government, the bank issued a fresh circular and invited applications in the prescribed form within 120 days from the notified date. The option was exercisable till 25.01.1996, and though the petitioner already had an earlier option to opt for pension or PF as per the fresh circular along with other employees. Even then, no application of the petitioner's option for pension was received till 25.01.1996 by the concerned department and the name of the petitioner was not included in the list of employees who had opted for pension and in her pay slip her option continued to be described as PF option. The petitioner did not object this. The petitioner is now estopped from claiming any right against the bank."

4.2 Learned counsel for the respondent submitted that the petition involves various disputed questions of facts and that the records of the bank at the Head Office, the option of the petitioner is shown to be that of Provident Fund and not Pension and her application for opting for pension was never received by the concerned authority at the Head Office. He has also raised a contention that the claim is barred by delay and latches.

4.3 The petitioner has filed affidavit in rejoinder controverting the contentions of the respondent. The petitioner has also produced documentary proof showing that right from March 1995 the amount is deducted from her account.

5.1 I have heard the learned counsel for the respective parties at length and also perused the record of the case. From the documents produced at Annexure-A it is clear that the petitioner had filed her option on 23rd September 1994. The petitioner has specifically pointed out that the petitioner had opted for pension, but through oversight, it had remained in the office record of the branch itself. This plea of the petitioner is supported by the fact that the respondent no.3 had verified and recommended her case. Therefore, it is clear that while forwarding the option on 30th November 1994 the then Assistant Manager or the concerned authority may not have forwarded the application of the petitioner.

5.2 This was not within the control of the petitioner. What the respondent states that is that as per the Head Office record, the petitioner had not opted for the Pension Scheme. It is obvious that if the concerned officer of the respondent no.3 had not forwarded the application of the petitioner, then the record of the Head Office would not show this fact. Therefore, for fault of the branch Manager or concerned authority of the respondent Bank the petitioner cannot be made to suffer.

5.3 The Pension Scheme was finally implemented in the year 1998 and as soon as the petitioner came to know that her case was not included in the pension scheme, she immediately made representation to the respondent Bank and followed up the same from time to time. Therefore, there is no substance in the argument that there was delay on the part of the petitioner. Thus, from the documents it is shown that the petitioner had opted for the pension Scheme in September 1994 and therefore, the nationalised bank who should be an ideal employer should not have rejected the representation of the petitioner and ought to have corrected the mistake once it is brought to their notice. The pension scheme is meant for the employees of the Bank who had served the bank for quite a long time and even on this count, the respondent should not have taken such a step in the present case, especially when the petitioner has acted promptly when she found out the mistake. Therefore, in my opinion, the contentions of the petitioner are required to be accepted.

6.1 In the result, the petition is allowed. The respondents are directed to accept the application of the petitioner at Annexure-A and treat her option as a member of the Pension Fund Scheme under the Regulations and further to give her the benefits flowing from the said scheme. Rule is made absolute accordingly with no order as to costs. It is clarified that the present order has been passed on the particular facts of the case and therefore this order shall not be treated as a precedent in any other case.

[K.S. JHAVERI, J.]

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